

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ONYX THERAPEUTICS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 17-1699 (LPS)
)	
AUROBINDO PHARMA USA, INC.,)	
)	
Defendant.)	

**STIPULATION AND COVENANT NOT TO SUE REGARDING
U.S. PATENT NOS. 7,232,818, 7,491,704, 8,129,346, AND 8,207,297**

WHEREAS Plaintiff Onyx Therapeutics, Inc. (“Onyx”) and Defendant Aurobindo Pharma USA, Inc. (“Aurobindo”) (collectively, “the Parties”), through their counsel, hereby stipulate and enter into the following covenant not to sue for the purpose of streamlining issues for trial:

NOW THEREFORE:

1. Onyx represents and warrants that it owns United States Patent No. 7,232,818 (“the ’818 patent”), titled “Compounds for enzyme inhibition”;
2. Onyx represents and warrants that it owns United States Patent No. 7,491,704 (“the ’704 patent”), titled “Compounds for enzyme inhibition”;
3. Onyx represents and warrants that it owns United States Patent No. 8,129,346 (“the ’346 patent”), titled “Compounds for enzyme inhibition”;
4. Onyx represents and warrants that it owns United States Patent No. 8,207,297 (“the ’297 patent”), titled “Compounds for enzyme inhibition”;
5. Aurobindo represents and warrants that Aurobindo submitted and holds Abbreviated New Drug Application (“ANDA”) No. 210823, seeking approval from the FDA to

engage in the commercial manufacture, use, sale, or offer for sale of its proposed generic carfilzomib 60 mg lyophilized powder for reconstitution and intravenous administration product;

6. Onyx, its successors and assigns stipulate and covenant not to sue or otherwise assert patent infringement against Defendant Aurobindo, its successors, assigns, affiliates, parents, subsidiaries, customers, manufacturers, distributors, importers, licensees, marketing partners or suppliers for any claims of the '818, '704, '346, and '297 patents based on Aurobindo's filing of ANDA No. 210823 or importing, making, using, selling, or offering for sale products that are the subject of and as described in ANDA No. 210823, including any amendments or supplements thereto.

7. In view of the foregoing covenant not to sue, the Parties, their successors and assigns stipulate that the infringement and therefore validity and enforceability of any claims of the '818, '704, '346, and '297 patents are no longer in issue in this action.

8. This Stipulation and Covenant Not to Sue shall not affect Onyx's ability to continue to seek injunctive and/or monetary relief from Aurobindo or its affiliates with respect to U.S. Patent Nos. 7,417,042; 7,737,112; 8,207,125; 8,207,126; and 8,207,127 (the "Remaining Patents-in-Suit") or to assert any other patents against Aurobindo, its successors, assigns, affiliates, parents, subsidiaries, customers, manufacturers, distributors, importers, licensees, marketing partners or suppliers in the future. This Stipulation and Covenant Not to Sue is without prejudice to any of Aurobindo's claims or defenses as to the Remaining Patents-in-Suit; shall not affect Aurobindo's ability to contest the infringement, validity and enforceability of the Remaining Patents-in-Suit; and shall not affect Aurobindo's ability to seek judgments of non-infringement, invalidity and unenforceability of, or any other relief with respect to, the Remaining Patents-in-Suit.

AGREED TO:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

CONNOLLY GALLAGHER LLP

/s/ Maryellen Noreika

/s/ Arthur G. Connolly, III

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*Attorneys for Plaintiff Onyx Therapeutics,
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*Attorneys for Defendant Aurobindo Pharma
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SO ORDERED this ____ day of March 2018

Chief, United States District Judge